

*Leviton, 1107-1 (412)*



**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

*9041*

TITLE

FILE: B-118638.104

DATE: February 5, 1979  
*Request for Payment for*

MATTER OF: Charles R. Kerick *Emergency Food Purchases*

DIGEST: Police Lieutenant provided food to District of Columbia policemen who were involved in disposal of tear gas containers and cleanup of storeroom after fire in D. C. Municipal Center and who could not leave work areas because their clothes were contaminated by tear gas. He may be reimbursed for food provided during temporary duty which lasted 14 hours near Fredericksberg, Virginia. However, he may not be reimbursed for food provided at D. C. storeroom since, in absence of specific legislation, *appropriated funds may not be used to pay subsistence of civilian employees at their headquarters*

*CAG 1300*

This action is in response to the request of August 8, 1978, from Mr. Charles E. Davis, an authorized certifying officer for the government of the District of Columbia, regarding the claim of Lieutenant Charles R. Kerick for reimbursement of expenses totaling \$116.40 relating to purchases of food for members of the Metropolitan Police Department.

The record reveals that a fire occurred at the Civil Disturbance Unit Storeroom in the District of Columbia Municipal Building. Lieutenant Kerick was in charge of the cleanup detail, which necessitated the disposal of damaged tear gas containers. On January 16, 1978, the officers worked at a gas disposal area at Camp A. P. Hill, near Fredericksberg, Virginia. The gas disposal area was located 5 miles from the nearest eating facility. In addition, the members of the detail were completely contaminated by the tear gas, which prevented the officers from leaving the disposal area. In light of these circumstances, and the fact that the detail lasted 14 hours, Lieutenant Kerick decided to utilize his personal finances to buy the officers sandwiches and hot drinks and transport the food to the disposal area. Lieutenant Kerick expended \$48.90 for the meals.

Following the disposal of the damaged tear gas containers, the officers were required to work on 2 days dismantling the walls and

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ceiling of the storeroom in the Municipal Building. This work completely contaminated the officers' clothing and made it impossible for them to leave the area to obtain meals. In addition, the officers on the detail worked at the storeroom up to 12 hours in a day. During the cleanup process at the storeroom, Lieutenant Kerick expended \$67.50 of his personal funds to purchase food for the officers on the detail.

The certifying officer questions whether the above conditions justify the reimbursement of Lieutenant Kerick for food purchased for the members of the cleanup detail.

With regard to the personal expenditures for the meals at the disposal area at Camp A. P. Hill, we have no objection to the reimbursement of the \$48.90 expended by Lieutenant Kerick. The expenditure occurred during urgent and unforeseen circumstances. In addition, the nearest eating facility was 5 miles away from the disposal area. Furthermore, the detail could have been authorized subsistence since the detail lasted for over 10 hours while the officers were on temporary duty away from headquarters. See Federal Travel Regulations (FPMR 101-7) para. 1-7.6d(1) (May 1973). In light of these circumstances and the fact that the Lieutenant's action has been administratively approved by the Chief of Police as necessary to the performance of the detail's official duties, the claim for \$48.90 may be allowed.

However, the reimbursement of Lieutenant Kerick for his personal expenditures for the officers' meals during the detail at the storeroom would be inappropriate. It is a well-established rule that the Government may not pay the subsistence expenses of or furnish free food to civilian employees at headquarters from appropriated funds without specific authority of law. B-189003, July 5, 1977, and 53 Comp. Gen. 71 (1973).

The above rule has been applied even though, as here, the employees may have been working under unusual circumstances. For example, in 42 Comp. Gen. 149 (1962) reimbursement to a Post Office Department official was denied for expenditures made by him from personal funds to provide carry-out restaurant food for postal employees who were required to remain on duty beyond regular office hours in order to conduct an election to determine the postal employees' choice of an employee organization. Reimbursement was

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denied even though "the expenditures for food for the team members were made as a result of lack of facilities within the building and the absolute necessity of their remaining constantly available."

Also, in decisions B-141142, December 15, 1959, and B-169235, April 6, 1970, we applied the general rule stated above and held that meals could not be supplied at Government expense to Federal mediators who were required to conduct mediation sessions considerably beyond regular hours and, at certain times, until completion.

However, in 53 Comp. Gen. 71 (1973), our Office did establish an exception to the general prohibition on payment for employees' meals from appropriated funds. In that case, food was provided to Federal Protective Service Officers of the General Services Administration who were kept in readiness to reoccupy a building of the Bureau of Indian Affairs which had been occupied by force. We noted that the case involved "the existence of an extremely emergent situation involving danger to human life and the destruction of Federal property" and we stated that we would not object to a determination by the agency that the expenses in question were necessary during an extreme emergency.

In 53 Comp. Gen. 71, supra, we stated that "such cases are rare" but did not attempt to describe the circumstances under which similar payments would be deemed proper. Rather, we stated that:

"However, whether payment of such expenses would be proper in similar cases that may arise in the future would necessarily depend on the facts and circumstances present in each case, having in mind that work in occupations such as those of policeman, firemen, security guards, etc., often is required to be performed under emergent and dangerous conditions and that such fact alone does not warrant departure from general rule against payment for employees' meals from appropriated funds."

Thus, even if the conditions are dangerous, this alone does not warrant departure from the general rule against payment for employees' meals from appropriated funds. It is necessary to find that the situation involves imminent "danger to human life and destruction of property." See B-185159, December 10, 1975.

Therefore, the question arises whether the facts of the present case satisfy the very limited exception in 53 Comp. Gen. 71. In B-185159, December 10, 1975, we held that the cost of providing food to investigative agents of the Bureau of Alcohol, Tobacco, and Firearms who were investigating a bombing of ATF offices and could not leave their posts for over 24 hours, was not reimbursable since the circumstances did not come within the purview of the exception established in 53 Comp. Gen. 71 (1973). The rationale of that decision was that the agents were not engaged in activities to prevent imminent danger to human life or Federal property, but were only investigating a dangerous situation which had already occurred.

We do not believe that the circumstances involved in the cleanup of the storeroom warrant an exception to the general prohibition on payment for employees' meals from appropriated funds. Although the officers were involved in an unusual situation, we do not find that the officers were engaged in activities to prevent imminent danger to human life or Government property. Furthermore, it is not unusual that police officers are required to work extended hours nor that their detail area be cordoned off from the public.

In view of the above, although Lieutenant Kerick may be reimbursed the \$48.90 expended for meals at the disposal area, he may not be reimbursed for the food purchased during the detail at the Municipal Building.

  
Acting Comptroller General  
of the United States